

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

ROBERT ALBERT, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

SIMPLE HOUSE SOLUTIONS LLC, a
Texas registered limited liability company,

Defendant.

Case No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT

Plaintiff Robert Albert (“Albert” or “Plaintiff”) brings this Class Action Complaint and Demand for Jury Trial against Defendant Simple House Solutions LLC (“SHS” or “Defendant”) to stop Defendant from violating the Telephone Consumer Protection Act by making unsolicited, prerecorded calls to consumers, including calls to consumers that have their phone number’s registered on the National Do Not Call registry (“DNC”), and to otherwise obtain injunctive and monetary relief for all persons injured by SHS’s conduct. Plaintiff, for his Complaint, alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

INTRODUCTION

1. SHS is a real estate company that makes cash offers on homes and assists consumers in buying/purchasing properties.¹
2. Telemarketing is a main component in SHS’s marketing plan, involving cold calls to consumers that have never solicited the services of SHS.

¹ <https://www.linkedin.com/company/simple-house-solutions/about/>

3. SHS also places prerecorded calls to consumers in order to solicit property sales and purchases.

4. SHS made at least 4 unsolicited, prerecorded sales calls to Plaintiff, despite the fact that Plaintiff has his cell phone number registered on the DNC.

5. In response to these calls, Plaintiff files this lawsuit seeking injunctive relief, requiring Defendant to stop making prerecorded voice sales calls to consumers without their consent, including solicitation calls to consumers that have their phone numbers registered on the DNC, as well as an award of statutory damages to the members of the Class and costs.

PARTIES

6. Plaintiff Albert is an Irving, Texas resident.

7. Defendant SHS is a Texas company headquartered in Dallas, Texas. SHS conducts business throughout this District and the United States.

JURISDICTION AND VENUE

8. This Court has federal question subject matter jurisdiction over this action under 28 U.S.C. § 1331, as the action arises under the Telephone Consumer Protection Act, 47 U.S.C. §227 (“TCPA”).

9. This Court has personal jurisdiction over Defendant and venue is proper in this District under 28 U.S.C. § 1391(b) because both Plaintiff and Defendant reside in this District and because the wrongful conduct giving rise to this case was originated from and directed to this District.

COMMON ALLEGATIONS

SHS Engages in Cold Calling

10. A fundamental part of SHS’s marketing plan involves cold calling to consumers that have never contacted SHS before.

11. Directly on its website, in a job posting, SHS states the importance of placing cold calls:

Work-Related Qualifications/Requirements:

- ✓ Must have at least 2 years of licensed real estate experience
- ✓ Top performers only needed. Closers!
- ✓ Must be willing to drive anywhere at any time.
- ✓ Must be willing to make cold calls and network with people you DO NOT KNOW
- ✓ Able to create relationships with clients along with an experience that leaves an outstanding impression
- ✓ Able to create instant credibility with potential clients by utilizing knowledge and showcasing your enthusiasm and passion for Customer Service & Real Estate!
- ✓ Must enjoy reaching out to new people on a constant basis, in person and on the phone
- ✓ Must have a minimum of 2 years of phone sales experience

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12. Employees have complained online about the necessity to make calls as part of the SHS team. For example, a former employee wrote on Indeed:

Long Hours- Pay checks are decent

Disposition Sales Associate (Former Employee) – Dallas, TX – November 3, 2018

Really long hours- 6 day work weeks, most days you sit behind a desk and make phone calls, some days you are out showing houses- just depends on the day.

✓ Pros

Paychecks are good

✗ Cons

Long days, no medical benefits, micro managed, no reimbursement for travel

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SHS Places Prerecorded Calls to Consumers Without Consent Regardless of Whether SHS is Calling Phone Numbers Registered on the DNC

13. SHS makes prerecorded calls to consumers without obtaining their prior written express consent.

² <https://www.simplehousedfw.com/hiring-listing-agent-team-lead-dallas-texas/>

³ <https://www.indeed.com/cmp/Simple-House-Solutions/reviews>

14. As explained by the Federal Communications Commission (“FCC”) in its 2012 order, the TCPA requires “*prior express written consent* for all ... prerecorded [solicitation] calls to wireless numbers and residential lines.” *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG No. 02-278, FCC 12-21, 27 FCC Rcd. 1830 ¶ 2 (Feb. 15, 2012).

15. SHS’s prerecorded voice calls therefore violate the TCPA.

16. There are numerous complaints posted online about prerecorded calls from Defendant to consumers. In many of these complaints, Defendant has directly responded to the person issuing the complaint.

17. For example, on August 17, 2019, a consumer wrote the following review on Google about SHS:



JB

1 review

★ ★ ★ ★ ★ 3 days ago

They have been spamming both of my phones for about a week. Today I recieved 15 calls and 15 automated voicemails from them, on my work phone. This phone has an Illinois number and the other is Dallas. Somehow they have both. They called so much it filled my voicemail up. I would never use them, simply because of their business tactics. The reviews stating the same do not seem to get any resolution. I will notify the BBB, as I am on the DNC list.



Response from the owner 3 days ago

Thank you for taking the time to write a review. We apologize about you receiving voicemails, please give us a call so we can ensure you won't receive anymore. We're just here to help in any way possible. Again thank you for your feedback and please give us a call so we can fix this. (:

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18. Another consumer posted on SHS’s Facebook page about unsolicited prerecorded voicemail calls:

⁴ Google Reviews – Simple House Solutions – (screenshot generated on August 20, 2019)



Stop making unwanted calls and ringless VM to my phone!! This is a n invasion of my privacy to bypass my phone's call filtering. If I was i nterested in your service I would contact YOU. I have filed a complai nt with the FCC today about these unwanted calls and voice mails.

March 1

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19. SHS did not respond to the above complaint, though a representative of SHS does normally respond to reviews and complaints on SHS's Facebook page.

20. Ironically, on April 20, 2019, a representative from SHS posted a response to a consumer complaint on SHS's Better Business Bureau ("BBB") page, stating that SHS would end its robocalling efforts:

Simple House Solutions LLC Response

04/20/2019

Contact Name and Title: ***** Manager
Contact Phone: XXX-XXX-XXXX
Contact Email: *****@simplehousesolutions.com

Whether positive or negative, we appreciate all feedback. So thank you for taking the time to share your experience, as it gives us valuable insight into areas we can improve upon.

We focus on reaching out to individuals in the hope of finding those that we can help, as they may be stuck in burdensome situations with their home and feel like there is no way out. Each individual is in different situations, and so we hope to find those that may often be overlooked but are in need.

We understand that you would no longer like to receive any contact from us and apologize about any distress any contact may have caused. We want to ensure your concerns are resolved! Would you please give us a call so we can ensure no variations of your information is in our system and so we can help ensure you are no longer contacted on any front?

Given your feedback we have decided as a company to end our robocalling efforts, thank you for your feedback and apologize for irritating you in the first place.

Again, thank you for your feedback and the time you've taken to help us improve as a company!

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⁵ <https://www.facebook.com/SimpleHouseSolutions/>

⁶ <https://www.bbb.org/us/tx/dallas/profile/real-estate-investing/simple-house-solutions-llc-0875-90847441/complaints>

21. Despite the above statement that the “robocalling efforts” would be stopped, they have continued.

22. There is a plethora of complaints posted online regarding prerecorded calls that consumers received without consent, and to phone numbers registered on the DNC. This is just a small sampling of those complaints:

- “Somehow these folks got my cell phone number. My cell is on the Do Not Call list. They keep calling me, but never use my name... They leave the same message every time. I don’t know anyone at this company, nor have I ever done business with them. I just keep reporting them to the FTC.”⁷
- “Despite asking to be removed from their spam call list, I still get their messages”⁸
- “They have called using an automated dialer multiple times. They leave an automated voicemail. I have received multiple calls from a restricted number. They leave an automated voicemail stating, Hi My name is Steven with Simple House Solutions and we are looking to buy houses in the neighborhood. Goes on to give the phone number XXX-XXX-XXXX. It is well known that these robocalls are illegal for advertising purposes and need to be stopped.”⁹
- “This is simple house solutions. They are trying to buy your property. They have left me multiple voicemails. I am drafting a letter a certified letter to the sting they need to stop calling. This is an illegal robocall and they can’t deny it since they are leaving automated voicemails.”¹⁰
- “Robocall wanting to buy my house. I wish I knew what company sold my information to these vultures. I am NOT amused!!”¹¹
- “I have tried to block their weekly calls to my phone even calling them to take my name off their call list as I am on the FED DO NOT CALL LIST”¹²
- “Repeated calling with offer to sell my house.”¹³
- “Robocalls soliciting for real estate sales.”¹⁴
- “wants to buy house that’s not for sale. Multiple calls”¹⁵
- “Real estate robo call. Spam. Do not call me.”¹⁶

⁷ <https://www.bbb.org/us/tx/dallas/profile/real-estate-investing/simple-house-solutions-llc-0875-90847441/customer-reviews>

⁸ <https://www.bbb.org/us/oh/cleveland/profile/health-savings-administrators/human-arc-inc-0312-23659/complaints>

⁹ *Id.*

¹⁰ <https://800notes.com/Phone.aspx/1-972-441-2318>

¹¹ *Id.*

¹² *Id.*

¹³ https://www.whitepages.com/phone/1-972-441-2318?from_pop_search=true

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

23. SHS either makes the calls itself or knows about the prerecorded calls that are being made on its behalf, does nothing to stop them, and instead seeks to benefit financially from the leads the unsolicited prerecorded calls generate.

24. Many, if not all of the prerecorded calls are being generated by Steven Page, the Inside Sales Manager for SHS:

OTHER TEAM MEMBERS



Larry Hayes
Outside Sales Associate



Steven Page
Inside Sales Manager



McKenzie Keese
Staffing and Development
Recruiter

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25. For example, all of the prerecorded voicemails that Plaintiff received were from Steven.

26. When calling 972-441-2318, the phone number Defendant used to call Plaintiff Albert, as well as numerous other consumers, an automated message answers identifying the number as belonging to Steven Page. The message from Page then asks the caller to leave a message indicating the caller's name, phone number and address.

27. In this specific complaint, SHS acknowledges the calls and identifies which employee is responsible:

¹⁷ <https://www.simplehousedfw.com/about-us/meet-the-team/>



Darren Davis

4 reviews

★★★★★ a month ago

Reporting them Again, The calls stopped for a while and have gotten three in the past week.

ILLEGAL ROBOCALLS, after reading the business response. I verified that my number is in the do not call list. Unsolicited sales calls to cell phones are illegal. Does not matter if the caller actually works there. They called many times from a restricted number and left an automated voicemail. I am in the process of reporting them to the FCC as well as the Texas attorney general. If they are willing to risk fines for robocalls imagine what they will do in general business practices. the message starts with this is Steven from Simple House Solutions. In response the call comes from a restricted number and is a recorded message which is a robo call and against ftc and state regulation.

They Don't Stop. Filing another complaint. They responded to the BBB saying they were ending the campaign and received another voicemail from Steven today. This number has been on the do not call list for 7 years.

Response from the owner 4 months ago

Darren ,

We appreciate any and all feedback. We're very sorry if the calls have sounded or came across as robocalls, Steven Page is one of many in our company that reach out to home owners that we could help or might just be looking to see what their house is worth. Please give us a call so we can get you off our call list so you don't receive anymore calls. Again thank you for giving this feedback we're always striving to do better as a company.

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28. In conclusion, SHS is aware and responsible for the unlawful prerecorded solicitation calls that are being made on its behalf.

29. SHS has shown negligence in acknowledging the unlawful prerecorded solicitation calls without taking steps to stop them, or ensure they are being made only in instances where SHS has express prior written consent from the consumers it is calling.

PLAINTIFF'S ALLEGATIONS

SHS Placed Prerecorded Calls to Plaintiff Without His Consent Despite the Fact That Plaintiff Registered His Cell Phone Number on the DNC

30. On September 1, 2003, Plaintiff registered his cell phone number on the DNC in order to avoid receiving solicitation and unwanted calls from telemarketers.

31. Plaintiff uses his cell phone for personal use only.

32. Plaintiff has received numerous unsolicited prerecorded voicemail messages on his cell phone from Defendant using phone number 972-441-2318.

¹⁸ Google Reviews – Simple House Solutions – (screenshot generated on August 20, 2019)

33. For example, on July 11, 2019, Plaintiff received a prerecorded voicemail message from Defendant using phone number 972-441-2318.

34. The prerecorded message was on behalf of Steven from Simple House Solutions. The purpose of the call was to determine if Plaintiff Albert was looking to sell his home.

35. Plaintiff Albert has lived in the same home for over 20 years and has no desire to sell his home. Albert has not been in contact with any realtors in order to inquire about selling his home.

36. Plaintiff does not have a relationship with SHS, or any of its affiliated companies, nor has he ever consented to any contact from Defendant.

37. Simply put, SHS did not obtain Plaintiff's prior express written consent to place any solicitation telephone calls to him using prerecorded voice messages.

38. In total, Plaintiff received at least 4 identical prerecorded solicitation voicemails from Defendant using phone number 972-441-2318.

39. Defendant's unauthorized telephone calls harmed Plaintiff in the form of annoyance, nuisance, and invasion of privacy, and disturbed Albert's use and enjoyment of his phone, in addition to the wear and tear on the phone's hardware (including the phone's battery) and the consumption of memory on the phone.

40. Seeking redress for these injuries, Albert, on behalf of himself and Classes of similarly situated individuals, brings suit under the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.*, which prohibits unsolicited prerecorded voice calls to landline and cellular phone and numbers, including unsolicited calls to phone numbers that are registered on the DNC.

CLASS ALLEGATIONS

Class Treatment Is Appropriate for Plaintiff's TCPA Claims Arising From Calls Made by SHS

41. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure 23(b)(2) and Rule 23(b)(3) on behalf of himself and all others similarly situated and seeks certification of the following Classes:

Prerecorded No Consent Class: All persons in the United States who from four years prior to the filing of this action (1) Defendant (or agents acting on behalf of Defendant) called (2) using a prerecorded voice message (3) for the same purpose that Defendant called Plaintiff.

Do Not Call Registry Class: All persons in the United States who from four years prior to the filing of this action (1) Defendant (or an agent acting on behalf of Defendant) called more than one time (2) within any 12-month period (3) where their telephone number had been listed on the National Do Not Call Registry for at least thirty days (4) for the same purpose that Defendant called Plaintiff..

42. The following individuals are excluded from the Classes: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendant, their subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest and their current or former employees, officers and directors; (3) Plaintiff's attorneys; (4) persons who properly execute and file a timely request for exclusion from the Classes; (5) the legal representatives, successors or assigns of any such excluded persons; and (6) persons whose claims against Defendant have been fully and finally adjudicated and/or released. Plaintiff anticipates the need to amend the Class definitions following appropriate discovery.

43. **Numerosity:** On information and belief, there are hundreds, if not thousands of members of the Classes such that joinder of all members is impracticable.

44. **Commonality and Predominance:** There are many questions of law and fact common to the claims of Plaintiff and the Classes, and those questions predominate over any

questions that may affect individual members of the Classes. Common questions for the Classes include, but are not necessarily limited to the following:

- (a) whether Defendant used a prerecorded voice when placing calls to Plaintiff and the members of the Prerecorded No Consent Class;
- (b) whether Defendant placed prerecorded voice message calls to Plaintiff and members of the Classes without first obtaining consent to make the calls;
- (c) whether Defendant placed more than one call to Plaintiff and members of the Do Not Call Registry Class despite calling phone numbers that are registered on the National Do Not Call registry;
- (d) whether Defendant's conduct constitutes a violation of the TCPA; and
- (e) whether members of the Classes are entitled to treble damages based on the willfulness of Defendant's conduct.

45. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Classes, and has retained counsel competent and experienced in class actions. Plaintiff has no interests antagonistic to those of the Classes, and Defendant has no defenses unique to Plaintiff. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the members of the Classes, and have the financial resources to do so. Neither Plaintiff nor his counsel have any interest adverse to the Classes.

46. **Appropriateness:** This class action is also appropriate for certification because Defendant has acted or refused to act on grounds generally applicable to the Classes and as a whole, thereby requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Classes and making final class-wide injunctive relief appropriate. Defendant's business practices apply to and affect the members of the Classes uniformly, and Plaintiff's challenge of those practices hinges on Defendant's conduct with respect to the Classes as wholes, not on facts or law applicable only to Plaintiff. Additionally, the damages suffered by individual members of the Classes will likely be small relative to the burden and expense of individual prosecution of the complex litigation necessitated by

Defendant's actions. Thus, it would be virtually impossible for the members of the Classes to obtain effective relief from Defendant's misconduct on an individual basis. A class action provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

FIRST CAUSE OF ACTION
Telephone Consumer Protection Act
(Violations of 47 U.S.C. § 227)
(On Behalf of Plaintiff Albert and the Prerecorded No Consent Class)

47. Plaintiff repeats and realleges paragraphs 1 through 46 of this Complaint and incorporates them by reference herein.

48. Defendant and/or its agents made unwanted solicitation telephone calls to Plaintiff and the other members of the Prerecorded No Consent Class using a prerecorded voice message.

49. These prerecorded voice message calls were made *en masse* without the consent of the Plaintiff and the other members of the Prerecorded No Consent Class.

50. Defendant has, therefore, violated 47 U.S.C. § 227(b)(1). As a result of Defendant's conduct, Plaintiff and the other members of the Prerecorded No Consent Class are each entitled to a minimum of \$500 in damages for each violation, and up to \$1,500 in damages for each violation in the event that the Court determines that Defendant's conduct was willful and knowing.

SECOND CAUSE OF ACTION
Telephone Consumer Protection Act
(Violation of 47 U.S.C. § 227)
(On Behalf of Plaintiff and the Do Not Call Registry Class)

51. Plaintiff repeats and realleges the paragraphs 1 through 46 of this Complaint and incorporates them by reference herein.

52. The TCPA's implementing regulation, 47 C.F.R. § 64.1200(c), provides that "[n]o person or entity shall initiate any telephone solicitation" to "[a] residential telephone subscriber

who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the federal government.”

53. 47 C.F.R. § 64.1200(e), provides that § 64.1200(c) is “applicable to any person or entity making telephone solicitations or telemarketing calls to wireless telephone numbers.”¹⁹

54. Any “person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may” may bring a private action based on a violation of said regulations, which were promulgated to protect telephone subscribers’ privacy rights to avoid receiving telephone solicitations to which they object. 47 U.S.C. § 227(c).

55. Defendant violated 47 C.F.R. § 64.1200(c) by initiating, or causing to be initiated, telephone solicitations to telephone subscribers such as Plaintiff and the Do Not Call Registry Class members who registered their respective telephone numbers on the National Do Not Call Registry, a listing of persons who do not wish to receive telephone solicitations that is maintained by the federal government.

56. Defendant violated 47 U.S.C. § 227(c)(5) because Plaintiff and the Do Not Call Registry Class received more than one telephone call in a 12-month period made by or on behalf of Defendant in violation of 47 C.F.R. § 64.1200, as described above. As a result of Defendant’s conduct as alleged herein, Plaintiff and the Do Not Call Registry Class suffered actual damages and, under section 47 U.S.C. § 227(c), are entitled, *inter alia*, to receive up to \$500 in damages for such violations of 47 C.F.R. § 64.1200.

¹⁹ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003) Available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-03-153A1.pdf

57. To the extent Defendant's misconduct is determined to be willful and knowing, the Court should, pursuant to 47 U.S.C. § 227(c)(5), treble the amount of statutory damages recoverable by the members of the Do Not Call Registry Class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Classes, prays for the following relief:

- a) An order certifying the Classes as defined above; appointing Plaintiff as the representative of the Classes; and appointing his attorneys as Class Counsel;
- b) An award of actual and/or statutory damages for the benefit of Plaintiff and the Classes;
- c) An order declaring that Defendant's actions, as set out above, violate the TCPA;
- d) An injunction requiring Defendant to cease all unsolicited calling activity, and to otherwise protect the interests of the Classes; and
- e) Such further and other relief as the Court deems just and proper.

JURY DEMAND

Plaintiff requests a jury trial.

Respectfully Submitted,

ROBERT ALBERT, individually and on behalf of
those similarly situated individuals

Dated: September 9, 2020

By: /s/ Stefan Coleman

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**Pro Hac Vice motion forthcoming*